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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,162	11/08/2005	Peter Bruce Darwood	562492004300	8234
25226 7590 07/01/2008 MORRISON & FOERSTER LLP 755 PAGE MILL RD PALO ALTO, CA 94304-1018				
EXAMINER				
LAM, DUNG LE				
ART UNIT		PAPER NUMBER		
2617				
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07/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/532,162

**Applicant(s)**

DARWOOD ET AL.

**Examiner**

DUNG LAM

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)–(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The Information Disclosure Statement submitted on 7/19/05 has been considered by the examiner (see attached PTO-1449 form).

### ***Claim Objections***

3. Claim 7-11 and 18-21 objected to because of the following informalities:  
Claims 7-11 and 18-21 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only--, *and/or*, -- *cannot depend from any other multiple dependent claim*. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1-11 and 23 is rejected under 35 U.S.C. 101.

Claims 1 recites, "An arrangement of a sequence of code" which does not fall under any patentable subject matter (i.e. process, machine, manufacture, or composition of matter). Thus claims 1-11 are non-statutory.

A computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Since claim 23 is a "computer program" which does not fall under any patentable subject matter (i.e. process, machine, manufacture, or composition of matter), the claimed invention is thus a non-statutory subject matter. (See MPEP 2106.01)

### ***Claim Rejections - 35 USC § 112***

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-11, the preamble of the claims are calling for an "arrangement of a sequence of code" which is not a patentable subject matter, however, the body of the claims appear to be that of a patentable subject matter of an apparatus evidenced by the "means for" clauses. Thus it is not clear what statutory subject matter is being claimed. For examination purpose, the examiner considered these claims as directing toward an apparatus containing means to perform the tasks. Applicant is invited to amend the claim to clearly define what statutory

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim(s) **1-4, 6, 12-17 and 22-24** is/are rejected under 35 U.S.C. 102(b) as being anticipated by **Schmidl** (EP 1063780).

6. Regarding **claim 1**, **Schmidl** teaches an arrangement for producing a sequence of a predetermined length in a spread spectrum communication system, the arrangement comprising (Abstract):

- a plurality of predetermined sequences having lengths less than the predetermined length ([0022]);
- means for selecting at least two of the plurality of predetermined sequences (append sequence 1 and 2; [0023]); and
- means for concatenating the selected at least two of the plurality of predetermined sequences to produce the predetermined length sequence (append sequence 1 and 2; [0023-24], tables between [0024] and [0025]).

7. Regarding **claim 2**, **Schmidl** teaches the arrangement of claim 1 wherein the plurality of predetermined sequences are arranged in an indexed list; and the means for

selecting comprises: means for selecting a first sequence of the at least two of the plurality of predetermined sequences with an index value of  $n$  from the list; and means for selecting each successive sequence of the at least two of the plurality of predetermined sequences with an index value incremented from that of the previously selected sequence from the list (each new sequence is comprised of seq. # and a circular shift of seq#2 which is using index  $(1+j)$ ); append sequence 1 and 2; [0023-24], tables between [0024] and [0025]).

8. Regarding **claim 3, Schmidl** teaches the arrangement of claim 2 wherein the increment is a predetermined integer ([0023-24], tables between [0024] and [0025]).

9. Regarding **claim 4, Schmidl** teaches the arrangement of claim 3 wherein the predetermined integer is one of: 0, 1 and 2 ([0023-24], tables between [0024] and [0025]).

10. Regarding **claim 6, Schmidl** teaches the arrangement of any one of claims 2-5 wherein  $n$  is determined from at least one of A-F: A initial cell parameter assignment, B system frame number (SFN), C chip rate of transmission, D predetermined length of spreading code ([0023-0026]), E identifier of intended receiver of data spread with the predetermined length spreading code, F channelisation code employed.

11. Regarding claims **12-17**, they are method claims having similar limitations that correspond to claims 1-5. Therefore, they are rejected for the same reasons as claims 1-5.

12. Regarding **claims 22-24**, they are claiming the same limitations as claim 1.

Therefore, they are rejected for the same reasons as claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over **Schmidl**.

13. Regarding **claim 5**, **Schmidl** teaches the arrangement of claim 2 except wherein the increment is randomly chosen for each successive sequence. However, it is known in the art to use the concept of using a random number to create a more secure and harder for an interceptor to decode the signal. Therefore, it would have been obvious for one of ordinary skill in the art to chose a random increment to provide more security.

***Citation of Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dent (US 5742678) teaches the multiple access code technique.

Li (US Pub. 2002/0122463) teaches a method of extending codes.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUNG LAM whose telephone number is (571) 272-6497. The examiner can normally be reached on M - F 9 - 5:30 pm, Every Other Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Harper can be reached on (571) 272-7605. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VINCENT P. HARPER/  
Supervisory Patent Examiner, Art Unit 2617